

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of Bryan Fifer,)	
Petitioner)	
And)	CAUSE NO. 050309-38
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Open Hearing
I.C. 20-5-63 et seq.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a 17-year-old junior (d/o/b February 3, 1988) and presently attends Floyd Central High School, a public high school located in the Floyd County Consolidated School District. He attended Providence High School (Providence) for his freshman and sophomore years. Providence is a private parochial high school located in Clarksville, Indiana. During his freshman and sophomore years at Providence, Petitioner was a member of the varsity golf team. His legal settlement, at all times relevant herein, has been in the Floyd County Consolidated School District and his assigned public high school at all times relevant herein, was Floyd Central High School.

On September 27, 2004, Petitioner¹ filed an IHSAA Athletic Transfer Report with Floyd Central, indicating Petitioner was seeking eligibility due to a hardship pursuant to Respondent's **Rule C-17-8.1**.² Petitioner was diagnosed with a learning disability while in the seventh grade. His parents enrolled him in a private school in Louisville, Kentucky, for students with learning disabilities. Petitioner attended this private school for seventh and eighth grades. Petitioner then attended Providence for his freshman and sophomore years. Providence provided accommodations to address Petitioner's learning disability and Petitioner did well at Providence

¹Anytime the term "Petitioner" is used, it will include Petitioners' parents, unless otherwise noted.

²The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders ("B" for Boys; "G" for Girls), but most of the by-laws are "common" to all potential athletes and, hence, begin with "C." Rule **C-17-8.1** is the IHSAA's "Hardship Rule." Generally, the "Hardship Rule" allows the IHSAA to "set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule."

All references herein are to the IHSAA's By-Laws for the 2004-2005 school year.

during his freshman year. Petitioner's grades dropped from B's to B's and C's during his sophomore year, and Petitioners felt that sufficient accommodations were not being made to meet Petitioner's needs. Petitioner enrolled in Floyd Central High School for his junior year. Petitioner maintains there are no athletically motivated reasons for his transfer to Floyd Central and he should be granted full eligibility to participate in varsity golf.

Providence completed its portion of the Transfer Report on November 29, 2004, stating the reason for the withdrawal was the "parents did not like the school." Floyd Central completed the Transfer Report on December 9, 2004, and did not state a reason for the transfer. Both schools indicated the transfer was not for athletic reasons and recommended limited athletic eligibility.³ Neither school signed the hardship verification pursuant to **Rule C-17-8.5**.⁴ The IHSAA Commissioner, on December 14, 2004, ruled that Petitioner have limited athletic eligibility at Floyd Central.

Petitioner requested a review of the Commissioner's decision by Respondent's Review Committee. This request was made on January 10, 2005. The Respondent's Review Committee conducted its review on February 18, 2005, and issued its decision on February 28, 2005, upholding the Commissioner's decision granting Petitioner limited eligibility.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel⁵ on March 9, 2005. The parties were notified that date of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. The parent notified the CRP on March 16, 2005, that he

³**Rule C-19-6** addresses transfer eligibility where there has been no corresponding change of residence. "Limited Eligibility" is defined under **Rule 19** as meaning a student may participate in all interschool athletics, except on varsity athletic teams, for a period of 365 days from the date of last participation at the previous school. The "limited eligibility" rule can be applied to situations where, as here, there has been no corresponding change of residence. See **Rule C-19-6.2**.

⁴**Rule C-17-8.5** grants the Commissioner, his designee or the Committee the authority to set aside the effect of the transfer rule and grant full eligibility if:

- (a) the student continues to reside with his/her parent(s) or guardian(s),
- (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer, and
- (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there is (sic) no athletic related motives surrounding the transfer.

⁵The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-5-63-7(c)(3).

wished for the proceedings in this matter to be open to the public. Petitioner requested and received subpoenas to secure testimony of witnesses. Hearing was set for April 6, 2005, within the offices of the Indiana Department of Education. The parties received timely notice of the proceedings.

On April 6, 2005, the CRP convened.⁶ The Petitioner appeared and was represented by his father. The Respondent appeared by counsel. Prior to the hearing, the pre-hearing conference was conducted for the purpose of receiving additional documents and entertaining objections. Respondent submitted one additional exhibit which was identified as Respondent's Exhibit 1. This exhibit was the Floyd Central High School Boys Varsity Golf schedule. The Junior Varsity schedule was also noted on the exhibit

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. B.F. is 17 years of age (d.o.b. February 3, 1988). He is currently enrolled as a junior at Floyd Central High School.
2. Petitioner has at all times resided with his parents within the New Albany-Floyd County Consolidated School District.
3. When he was in the seventh grade, Petitioner's parents had him evaluated outside of the school environment. This testing, in February, 2001, revealed the existence of a learning disability.
4. Petitioner's parents immediately enrolled Petitioner in Meredith Dunn School, a private school in Louisville, Kentucky, for students with learning disabilities. Petitioner attended Meredith Dunn for the spring of 2001 and the 2001-2001 school year, completing seventh and eighth grades.
5. Petitioner attended Providence High School for his freshman and sophomore years. Petitioner's parents provided documentation of Petitioner's learning disability to the learning differences coordinator and discussed accommodations to enable Petitioner to perform in school.

⁶Eight members were present: John L. Earnest, Chair; Scott F. Eales; Denise Gilliland; Thomas J. Huberty, Ph.D.; James Perkins, Jr.; Brenda K. Sebastian; Terry Thompson; and Brad Tucker.

6. Petitioner's parents were satisfied with the educational experience Petitioner had at Providence during his freshman year. They were less well satisfied with the educational experience during Petitioner's sophomore year and felt Providence did not provide adequate accommodations to enable Petitioner to perform at an acceptable level.
7. During Petitioner's freshman year, a new learning differences coordinator was hired. The previous coordinator continued at Providence as a guidance counselor. Petitioner's parents were unaware of this change.
8. Petitioner struggled in Geometry, and his parents obtained outside tutoring, deeming the accommodations provided by Providence to be inadequate.
9. Petitioner's parents were also dissatisfied with the lack of accommodations or what they felt to be inappropriate testing in a religion class.
10. At the conclusion of his sophomore year, Petitioner expressed an interest to his parents in transferring to Floyd Central. Being unable to convince him to transfer to Trinity High School or St. Xavier High School in Louisville, his parents consented to allowing him to transfer to Floyd Central.
11. Petitioner is not receiving any accommodations for his learning disability at Floyd Central, nor has Petitioner requested any accommodations.
12. Petitioner has not requested that Floyd Central conduct an educational evaluation to determine whether Petitioner is eligible for services as a student with a learning disability.
13. Although Petitioner argued that financial considerations were a part of the reasons for the transfer to Floyd Central, Petitioner did not claim financial hardship nor did he present any financial information to support a determination of financial hardship.
14. Petitioner participated in varsity golf at Providence as a freshman and sophomore.
15. Petitioner's transfer to Floyd Central was not accompanied by a corresponding change of residence by Petitioner's parents.
16. Petitioner filled out an IHSA Athletic Transfer Report indicating Petitioner was seeking eligibility due to a hardship pursuant to Respondent's **Rule C- 17-8.1**.
17. Both Providence and Floyd Central signed the Transfer Report indicating the transfer was not for athletic reasons and recommending limited athletic eligibility.
18. Neither school signed the hardship verification pursuant to **Rule C-17-8.5**.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are “state action” and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. P.L. 15-2000, adding I.C. 20-5-63 *et seq.* to the Indiana Code. The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent’s adverse eligibility determination.
2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. Petitioner transferred schools without a corresponding change of residence. A student who transfers without a corresponding change of residence to a new district by the student’s parents may be declared immediately eligible provided there has been provided to Respondent reliable, credible and probative evidence that one of thirteen (13) enumerated criteria has been met. **Rule C-19-6.1**. Petitioners do not meet the criteria of **Rule C-19-6.1**.
4. The Respondent has the authority to set aside the effect of the transfer rule and grant a student full eligibility if (a) the student continues to reside with his parents, (b) the student establishes to the satisfaction of Respondent that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer, and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer. **Rule C-17-8.5**. The requirements of this rule are not met as neither the principal of the sending school or the receiving school made the requisite affirmation.
5. Pursuant to **Rule C-17-8.1**, the Respondent has the authority to set aside the effect of the transfer rule if all of the following conditions are met:
 1. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
 2. The spirit of the Rule has not been violated; and
 3. There exists in the particular case circumstances showing an undue hardship which would result from enforcement of the Rule.

Ordinary cases shall not be considered hardship; rather, . . . the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party. Injury, illness or accidents are possible causes for a hardship consideration. Likewise, a change in financial condition of the student or student's family that is permanent, substantial, and significantly beyond the control of the student or student's family may constitute a hardship. **Rule C-17-8.4.** Although Petitioner claimed hardship in the Transfer Report, the evidence does not support a determination of hardship. Petitioner argues alternatively that Providence failed to provide adequate accommodations to meet Petitioner's needs as a student with a learning disability, and that payment of tuition, in addition to hiring a tutor, is a financial burden. Petitioner has failed to request any accommodations from Floyd Central. Petitioner has also failed to produce evidence of financial hardship. Petitioner's transfer to Floyd Central is not a hardship such that the transfer rules should be set aside.

ORDER

The Case Review Panel, by a vote of 8-0, upholds the decision of the Respondent to grant Petitioner limited eligibility at Floyd Central High School for 365 days from the date of his last athletic contest at Providence High School.

DATE: April 26, 2005

/s/ John Earnest, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.